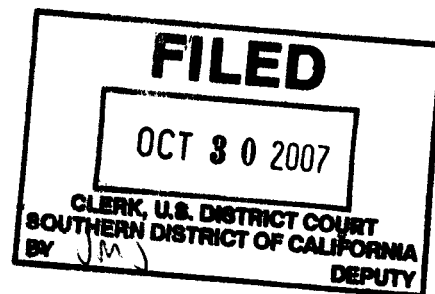


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Attorneys for Plaintiff  
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Magistrate Case No. 07MJ2403

Plaintiff,

**STIPULATION OF FACT AND JOINT  
 MOTION FOR RELEASE OF  
 MATERIAL WITNESS(ES) AND  
 ORDER THEREON**

v.

TRACY ANN NELSON (1),

Defendant.

(Pre-Indictment Fast-Track Program)

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carla J. Bressler, Assistant United States Attorney, and defendant TRACY ANN NELSON, by and through and with the advice and consent of defense counsel, Elizabeth Barros, Esq., Federal Defenders of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

CJB:kmm:10/11/07

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **November 8, 2007**.

6           4. The material witnesses Efrain Martinez-Casillas and Jesus Gamez-Aguado, in this  
7 case:

8               a. Are aliens with no lawful right to enter or remain in the United States;

9               b. Entered or attempted to enter the United States illegally on or about October 6,  
10 2007;

11              c. Were found in a vehicle driven by defendant near Jamul, California and that  
12 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right  
13 to enter or remain in the United States;

14              d. Were paying or having others pay on their behalf \$2,500-3,000 to others to  
15 be brought into the United States illegally and/or transported illegally to their destination therein;  
16 and,

17              e. May be released and remanded immediately to the Department of Homeland  
18 Security for return to their country of origin.

19           5. After the material witnesses are ordered released by the Court pursuant to this  
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
21 reason, or thereafter withdraws her guilty plea to that charge, defendant agrees that in any  
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
23 attack, that:

24               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
25 substantive evidence;

26               b. The United States may elicit hearsay testimony from arresting agents  
27 regarding any statements made by the material witness(es) provided in discovery, and such testimony

1 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
2 of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.


15 Respectfully submitted,

16 KAREN P. HEWITT  
United States Attorney

17  
18 Dated: 10/30/07.

  
19 CARLA J. BRESSLER  
Assistant United States Attorney

20  
21 Dated: 10/21/07.

  
22 ELIZABETH BARROS  
Defense Counsel for  
TRACY ANN NELSON

23  
24 Dated: 10/23/07.  
25 T.N.

  
26 TRACY ANN NELSON  
27 Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 10/30/07.

  
United States Magistrate Judge